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<sup>16</sup> Although the third person to be selected is designated an umpire that does not make him such if his prescribed duties are those of a third arbitrator. *Home Ins. Co. v. Schiff*, 103 Md. 648, where the differences between an umpire and a third arbitrator are clearly pointed out.

**Fire insurance policies.**—The following clause is usually found in fire policies: "In the event of disagreement as to the amount of loss, the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and failing to agree, shall submit their differences to the umpire, and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them, and shall bear equally the expense of the appraisal and umpire." Where an award has been made pursuant to this clause, it is binding on the parties. *Caledonian Ins. Co. v. Traub*, 80 Md. 214. The clause requires combined action by the appraisers and the umpire has no authority to act except when they differ. Hence where one of the appraisers withdraws before the work is completed, an award made by the umpire and the other appraiser is invalid. *Caledonian Ins. Co. v. Traub*, 83 Md. 524. If the award in such case is made before a final disagreement between the arbitrators it is invalid, if after a final disagreement it is valid. *Caledonian Ins. Co. v. Traub*, 86 Md. 86. Cf. *Home Ins. Co. v. Schiff*, *supra*. The fact that the umpire is not chosen until after the appraisement has begun is no bar to his acting. *Caledonian Ins. Co. v. Traub*, 83 Md. 524. The appointment of an appraiser by the insured is a condition upon which the liability of the insured depends. If, therefore, after such appointment the appraiser withdraws at the instigation of the insured, there can be no recovery on the policy. *Caledonian Ins. Co. v. Traub*, 83 Md. 524. But where the appraisement fails through no fault of the insured, he can sue and he can bring his suit within a reasonable time after the appointment of appraisers, although the defendant has not waived the appraisement. *Connecticut Ins. Co. v. Cohen*, 97 Md. 294; *Shawnee Ins. Co. v. Pontfield*, 110 Md. 353 and cases *supra*.

The appraiser is not the agent of the person appointing him, but should act on his own judgment and be free from the control of both parties. *Connecticut Ins. Co. v. Cohen*, *supra*. When an award of arbitrators under a policy has been canceled by a court of competent jurisdiction, it cannot be considered by the jury in an action on the policy. *Palatine Ins. Co. v. O'Brien*, 107 Md. 341.